



Public Notice

U.S. Army Corps
of Engineers
Pittsburgh District

In Reply Refer to
Notice No. below

US Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Notice No. 03-NWP1

Date: January 6, 2003

EXPIRATION FOR NATIONWIDE PERMITS FOR SURFACE COAL MINING ACTIVITIES

Mining activities authorized by nationwide permits (NWP) 14, 21, and/or 26 issued under the December 13, 1996 Federal Register, Final Notice of Issuance, Reissuance and Modification of the Nationwide Permits (61 FR 65874) that have commenced or were under contract to commence by February 11, 2002, will have until **February 11, 2003** to complete the authorized activities in waters of the United States.

Mining activities authorized by the NWP 14 issued under the March 9, 2000 Federal Register, (65 FR 12818-12899) that have commenced or were under contract to commence by March 18, 2002, will have until **March 18, 2003** to complete the authorized activities in waters of the United States.

If you have not completed work in waters of the United States by these above dates, you must obtain written authorization from the District Engineer under the current, reissued NWPs.

On 15 January 2002, the Corps published a notice in Part II of the Federal Register (67 FR 2020) announcing the reissuance of nationwide permits (NWP). The 15 January 2002 Federal Register notice is available on the Internet at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/2002nwps.pdf>.

One of these nationwide permits (NWP 21) authorizes discharges of dredged or fill material into waters of the United States associated with surface coal mining activities, provided the coal mining activities are authorized by the Department of Interior, Office of Surface Mining or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act (SMCRA) of 1977.


To obtain a current NWP 21 authorization, the District Engineer must determine the activity complies with the terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. Even though the District Engineer has ultimate responsibility to determine whether a proposed activity complies with the terms and conditions of this NWP, the applicant must provide the District Engineer with basic information concerning their project and its environmental effects. The District Engineer must notify the applicant of the determination in writing before any work in waters of the U.S. may be conducted.

As stated under the NWP 21, "In determining the need for, as well as the level and type of mitigation, the District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, the District Engineer will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where OSM or the state has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404."

Please be advised the Corps is continuing to analyze the impacts of Judge Haden's May 8, 2002 decision Kentuckians for the Commonwealth, Inc. v. Colonel John Rivenburgh et al, Civil No. 2:01-0770, U.S. District Court for the Southern District of West Virginia on the Corps' 404 regulatory program. The District Court's Memorandum Opinion and Order of June 17, 2002 clarified the **Huntington District** is enjoined from issuing any further Section 404 permits for fills having no primary purpose or use but the disposal of waste. In particular the issuance of mountaintop removal overburden valley fill or other fill permits solely for waste disposal under Section 404 is enjoined.

If you have any questions concerning the above, within the Huntington District, please contact Mr. Mark Taylor at (304) 529-5710; within the Louisville District, please contact Mr. Jerry Sparks at (606) 642-3053; within the Nashville District, please contact Mr. Wade Whittinghill at (615) 369-7511; within the Norfolk District, please contact Mr. Mike Schwinn at (757) 441-7182; and within the Pittsburgh District, please contact Mr. Al Rogalla at (412) 395-7155.

FOR THE DISTRICT ENGINEER:


Albert H. Rogalla
Chief, Regulatory Branch
Pittsburgh District